

REMARKS

Claims 1-13 are presently pending. The status of the claims is as indicated in the Response dated March 28, 2005, responding to the final Office Action of January 28, 2005.

Applicants respectfully request reconsideration of the application in view of the remarks appearing below. More specifically, Applicants respectfully request that the Examiner review this document prior to again reviewing the Response filed March 28, 2005.

Refusal to Enter Affidavit Submitted along with Response of March 28, 2005

In the Advisory Action of April 21, 2005, the Examiner indicated a refusal to enter the Declaration of Alan Gnann submitted along with the Response of March 28, 2005, filed in response to the final Office Action of January 28, 2005 (the "1/28/05 Office Action"). In particular, the Examiner stated that the Declaration is untimely and the showing is not commensurate with the scope of the claims. The Examiner then recited Form Paragraph 7.66.03 of the MPEP that states that the Declaration refers only to the system described in the application and does not show that the objective evidence of non-obviousness is commensurate with the scope of the claims.

Applicants respectfully disagree that the Declaration: 1) is untimely; 2) is of a nature such that it is subject to Form Paragraph 7.66.03 and 3) should not have been entered and considered by the Examiner. Each of these items is discussed below following a brief discussion of the Declaration and the reason Applicants filed the Declaration.

The Declaration is a declaration of an expert in the field of fly-fishing rod component manufacturing, Mr. Alan Gnann, stating that the terms "up-locking" and "down-locking" have well-known and definitive plain and ordinary meanings in the fly fishing industry. The meanings declared by Mr. Gnann are the same meanings that Applicants have been asserting to the Examiner in response to the various claim rejections made by the Examiner during prosecution of the present application.

Applicants submitted the Declaration in order to provide objective evidence of an expert in the field of fly fishing that the terms "up-locking" and "down-locking" do indeed have very well-known and specific meanings in the art and that someone having ordinary skill in that art would not construe these well-known terms to have the alternative meanings asserted by the

Examiner in section 5 of the 1/28/05 Office Action. Generally, Applicants' submission of the Declaration was prompted by the Examiner's statement in the 1/28/05 Office Action that "[n]o evidence has been submitted to show that up-locking is a well-known term in the art." 1/28/05 Office Action, section 5. Prior to the 1/28/05 Office Action, Applicants had no firm indication that the Examiner would take issue with construing "up-locking."

Timeliness

Regarding timeliness, Applicants assert that prior to the 1/28/05 Office Action they had no reason to believe that they needed to submit evidence "up-locking" is indeed well-known terminology in order to overcome the Examiner's concerns regarding same. Section 2111.01 of the MPEP states that during prosecution "[c]laim terms are presumed to have the ordinary and customary meanings attributed to them by those of ordinary skill in the art." Applicants used the term "up-locking" in the present application and throughout the claims precisely because of its well-established ordinary and customary meaning in the fly-fishing industry. Again, until the 1/28/05 Office Action, Applicants had no reason whatsoever to know that they would be challenged by the U.S. Patent and Trademark Office on terminology that is so well-known in their industry. Indeed, given the above cited instruction of MPEP § 2111.01 and the lack of any indication prior to the 1/28/05 Office Action that the Examiner is challenging the construction of the term "up-locking," Applicants had no burden to submit, and, furthermore, had no actual notice that they needed to submit, evidence as to the well-known nature of this term.

Consequently, Applicants assert that it is manifestly improper to assert that the Declaration of Alan Gnann is untimely. In this connection, Applicants assert that the Declaration is, in fact, timely under MPEP § 716.01(A)(3)(i) as being filed with a first reply after final rejection for overcoming a requirement made in the final rejection, the "requirement" being the submission of evidence that the term "up-locking" has a well-known meaning in the relevant art.

Nature of the Declaration

As mentioned above, Applicants submitted the Declaration of expert Mr. Alan Gnann to provide the Examiner with evidence of the well-known meanings of "up-locking" and "down-locking" in the art of fly fishing, i.e., to provide the Examiner with objective evidence of the proper construction of claim terminology. Applicants did not submit the Declaration to provide

objective evidence of nonobviousness of the claims. Rather, the nonobviousness of the claims is addressed in the Response of March 28, 2005, which accompanied the Declaration, as well as in the Response of July 6, 2004.

Consequently, the Declaration of Mr. Alan Gnann is not a declaration that provides any evidence whatsoever as to the nonobviousness of the claims. Again, the Declaration merely states the well-known, accepted meanings of the terms "up-locking" and "down-locking" in the art relevant to the present invention, partly in response to the statements the Examiner made in the final Office Action. One way to view the nature of the present Declaration is to consider that had the Examiner known the well-accepted meaning of the term "up-locking," the arguments of Responses of July 6, 2004 and March 28, 2005 would have stood alone because the Examiner would not have needed Applicants to submit explicit objective evidence of the meaning of "up-locking." However, since the Examiner questioned the meaning of "up-locking," Applicants submitted the Declaration, but only to provide the Examiner with the well-known meaning of "up-locking." That is, the Declaration has been submitted only to convince the Examiner that "up-locking" indeed has the meaning that Applicants have asserted all along. It has not been submitted as objective evidence of non-obviousness, but rather as objective evidence of claim construction.

However, the Examiner applied Form Paragraph 7.66.03, which is clearly directed to declarations that provide, or attempt to provide, objective evidence of nonobviousness. Applicants assert that Form Paragraph 7.66.03 is not relevant to the present Declaration, which, again, provides objective evidence of claim construction.

Applicants filed the Declaration under 37 C.F.R. § 1.132 in accordance with the provisions of this section, which is generally a "catch-all" provision for declarations that do not fall under any other specific section of the Rules. MPEP § 716. While Form Paragraphs 7.66.01 through 7.66.05 are directed to declarations relating to objective evidence of non-obviousness, this does not mean that every declaration submitted under 37 C.F.R. § 1.132 is such a declaration. Clearly, as the present Declaration demonstrates, there are other types of Declarations that are not covered by Form Paragraphs 7.66.01 through 7.66.05.

The Examiner Should Have Considered the Declaration

Since the Declaration of Mr. Alan Gnann was timely filed and does not in and of itself attempt to provide objective evidence of nonobviousness, but rather address the Examiner's apparent request for objective evidence of claim construction, Applicants assert that the Examiner should have considered the Declaration even though it was submitted after a final Office Action. In Applicants' view, the Declaration simply serves to put into proper context the arguments in favor of nonobviousness presented in the Responses of July 6, 2004 and March 28, 2005.

Telephone Interview with Examiner

On May 11 and 12, 2005, the undersigned attorney discussed by telephone with the Examiner the propriety of the Examiner's refusal to enter and consider the Declaration of Alan Gnann. During the interview, the Examiner stated that he and his supervising examiner are fisherman and have never heard the term "up-locking." Applicants note that the Examiner has not provided any evidence that he and/or his supervisor are experts in fly-fishing, not to mention experts in the field of fly-fishing equipment manufacture, as is Mr. Alan Gnann, who has declared that the terms "up-locking" and "down-locking" have well-known, very specific meanings in the fly fishing industry.

If in a next Office Action the Examiner continues to take the position that the term "up-locking" has a meaning in the fly-fishing industry contrary to the plain and ordinary meaning declared by expert Mr. Alan Gnann, it is Applicants' position that it is incumbent upon the Examiner to provide objective counter-evidence that supports the Examiner's position.

Inapplicability of Down-Locking, Non-Fly-Fishing Equipment References

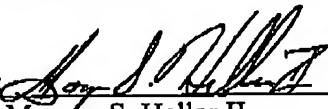
Applicants desire to take this opportunity to emphasize that a cowl according to the present invention and the present claims cannot be used to retrofit a conventional rod having a non-fly-fishing, down-locking reel lock due to the physical differences between the up-locking reel lock addressed by the present invention and conventional down-locking reel locks as seen, e.g., in U.S. Patent Des. 131,494 to Pontis. Consequently, it is Applicants position that any references directed to down-locking, non-fly-fishing equipment are not relevant in rejecting the present claims.

Conclusion

In view of the foregoing and the prior Responses submitted on July 6, 2004 and March 28, 2005, Applicants respectfully submit that claims 1-13, as previously amended, are in condition for allowance. Therefore, prompt issuance of a Notice of Allowance is respectfully solicited. If any issues remain, the Examiner is encouraged to call the undersigned attorney at the number listed below.

Respectfully submitted,

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